83-758

NO.



# In the Supreme Court of the United States

OCTOBER TERM, 1983

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LUKE FONTANA,
PETITIONER

v.

MACK E. BARHAM, ET AL,
RESPONDENT.

---

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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## PETITION FOR WRIT OF CERTIORARI

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Petitioner

## QUESTION PRESENTED FOR REVIEW

Whether prevention of abuses of power by high state officials remains the underlying purpose of 42 USC §1983 following the decision of this court in Parratt v. Taylor, 451 U.S. 527 (1981).

## LIST OF ALL PARTIES

All parties to this case are lisetd below:

Luke Fontana

Mack E. Barham

Ernest Morial

Reynard Rochon

Salvador Anzelmo

Charles Cotton

Ernest Jones

David Dennis

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Petitioner, Luke Fontana, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered on June 17, 1983.

## OPINION BELOW

The Court of Appeals entered its written decision affirming the dismissal of plaintiff's claim on June 17, 1983.

A copy of the opinion is attached as Appendix A.

The Court of Appeals denied petitioner's petition for rehearing and petition for rehearing en banc on July 17, 1983. A copy of the order is attached as Appendix B.

## JURISDICTION

The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOKED

42 United States Code, Section 1983:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Amendment XIV of the U.S. Constitution:

> All persons born or naturalized in the United States and subject to to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

—o—

## STATEMENT OF THE CASE

This civil rights case arises as a direct result of the unlawful manner in which petitioner's interest in Four Hundred Thousand ($400,000.00) Dollars of attorney's fees was eliminated.

In 1976 petitioner, Luke Fontana, an attorney, was retained by Mrs. Sheryl Cheatham, along with the law firm of

Cotton, Jones and Dennis, to represent Mrs. Cheatham's interest against the City of New Orleans and two police officers for the wrongful death of her husband, Charles Cheatham. After a jury verdict at the District Court in excess of $600,000.00, the city appealed. On appeal, the State Court of Appeals reversed the finding of liability on behalf of the city and lowered the amount of the judgment to approximately $200,000.00. Subsequently, the law firm of Cotton, Jones and Dennis hired Mr. Mack E. Barham, a former Louisiana Supreme Court Justice, to file a writ application and pursue the appellate process in the Louisiana Supreme Court. Mr. Barham's efforts were successful and the judgment was reinstated by the Louisiana Supreme Court early in 1980.

At about the time the judgment was issued by the Louisiana Supreme Court it became apparent that there was a dispute as to Mr. Fontana's entitlement to attorney's fees. Mr. Fontana was an attorney of record and was a party to an employment contract with Mrs. Cheatham as co-counsel on the case. In the course of the dispute, prior to the disbursemnet of the funds, an intervention in the case was filed. Again, prior to disbursement of the funds, Salvador Anzelmo, City Attorney for the City of New Orleans, advised the Chief Administrative Officer of the City of New Orleans, Reynard Rochon, that because of the dispute the City should withhold paying the funds comprising fees to any of the attorneys until the matter was resolved. A copy of the

memorandum of the City Attorney is attached as Appendix C.

Despite the specific recommendations of the City Attorney, two checks totaling $800,000.00 were issued to Mrs. Cheatham individually and paid to her in the presence of all the attorneys except Luke Fontana. Mrs. Cheatham was escorted directly from City Hall to the Hibernia National Bank where funds were distributed to all save Mr. Fontana.

It is clear from this and other evidence obtained during discovery that Mr. Mack E. Barham entered into a conspiracy with the highest city officials to deprive Mr. Fontana of his share of the judgment. The allegations of the complaint filed in the Eastern District of Louisiana clearly set out

the cause of action.

The District Court dismissed petitioner's complaint based upon its reading of Parratt v. Taylor, 451 U.S. 527 (1981). The Court of Appeals affirmed the dismissal without reaching the issue of whether Parratt was applicable. The Court of Appeals somehow found that Mr. Fontana had lost nothing despite the fact that twice in its opinion the Court of Appeals stated the Mr. Fontana had a claim for conversion in state court.

_____o_____

## REASON FOR GRANTING THE WRIT

The present case presents a necessary counterpart to the recent decision in Parratt, supra. Parratt

dealt with the negligent loss of twenty three dollars of hobby materials. The present case involves the loss of two hundred thousand dollars of attorney's fees through the corrupt intentional acts of the highest officials of the City of New Orleans and a former Justice of the Louisiana Supreme Court. The present case is exactly the type case for which 42 U.S.C. 1983 was intended. Unfortunately, the lower courts have read the Parratt opinion as an open invitation to emasculate 42 U.S.C. 1983.

The underlying purpose of 42 U.S.C. 1983 is to prevent abuses of power by those acting under color of state law. Robertson v. Wegmann, 436 U.S. 584 at 591 (1978).[1]

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[1] Not surprisingly, another case from Louisiana.

Clearly abuses of power by high government officials should not be subject to more lenient approaches. Yet the "inarticulate major premise" of the opinion of the Fifth Circuit is that difficult cases involving the corrupt acts of high state government officials are better handled by the state judiciary.

In the present case, the Fifth Circuit correctly found that Louisiana State law provided plaintiff with a lien right against the Cheatham judgment to secure payment of his attorney's fees. Having a lien right against the judgment is certainly a "legitimate claim of entitlement." Board of Regents, v. Roth, 408 U.S. 564 (1972). Mr. Fontana had a lien which protected his legitimate claim against the judgment. Once the

judgment was unlawfully paid to other parties Mr. Fontana could no longer pursue his claim against the judgment. Mr. Fontana had lost his lien and his claim against the judgment and was forced to proceed remedially to attempt to regain his fees from the individuals who had virtually stolen them. The Fifth Circuit ignored the fact that Mr. Fontana has lost his claim against the judgment and proceeded as if all Mr. Fontana ever had was an "incorporeal contractural claim for attorney's fees." Fontana v. Barham, 707 F.2d 221 at 226 (5 Cir. 1983). And:

> ..."All Fontana ever had was a claim for attorney's fees, a claim he retains to this day. In no way has he been divested of his entitlement to pursue the enforcement of that claim."
>
> Fontana v. Barham, supra, 707 F.2d 221 at 226-7 (5 Cir. 1983)

Twice in the opinion the Fifth

Circuit acknowledges the existance of state claims for breach of contract and conversion:

> Additionally, an attorney has a cause of action for fees based on the employment contract with his client as well as a cause of action in conversion against anyone who unlawfully appropriates those fees.
>
> Fontana v. Barham, supra at 707 F.2d at 226. (Emphasis supplied.)
>
> As to the remaining avenues for pursuing his claim, contract and conversion ....
>
> Idem. (Emphasis supplied).

The petition properly alleges that Mr. Fontana's fees were converted through concerted action of high government officials and the other defendants. By what definition of conversion is it possible for the Fifth Circuit to see conversion as a viable state action but to find that Mr. Fontana has lost nothing cognizable under 42 U.S.C. 1983? It is not

possible for Mr. Fontana's fees to be converted and for him to have lost nothing. Additionally, "the existence of a state tort claim does not negate the entitlement of a a litigant to a federal action as well." Briley v. State of California, 564 F.2d 849, 854 n.4 (9 Cir. 1977); cited with approval Howell v. Tanner, 650 F2d. 610 n. 9 (5 Cir. Unit B 1981).

One of the defendants to this action is the Mayor of New Orleans, Ernest N. Morial, who was previously employed as a judge on the very state circuit court of appeals which would have jurisdiction over any claims filed in state court. Another defendant, the prime mover in the conspiracy, Mack E. Barham, is a former Justice of the Louisiana Supreme Court. Even were

Louisiana not as political as it is, one would prefer not to have one's case against powerful state political figures tried before the elected state judiciary. The lower courts in this case, however, felt that "The right to receive his fair share of attorney's fees is one of a number of interests best protected by the state through its tort laws." (District Court opinion cited with approval by the Fifth Circuit; Fontana v. Barham, supra, 707 F.2d at 224.) In fact, the defendants are best protected by proceeding in state court. In truth, both lower courts have drafted opinions specifically intended to shift this difficult case involving corrupt acts of high government officials to the state courts. These actions undermine the

Supreme Court's clearly enunciated position that 42 U.S.C. 1983 has as its underlying purpose the prevention of abuses of power by government officials. This is not simply an "attorney's fees case"; this is an abuse of power case. The highest officials of the City of New Orleans paid a judgment in a manner which was specifically designed to, and did, deprive Mr. Fontana of his lien and lawful claim against the judgment.[2]

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[2]The Fifth Circuit has incorrectly stated that the present unavailability of state lien statutes "has resulted from his [Fontana's] own procedural defaults" Fontana v. Barham, supra, 707 F.2d at 226. The case relied upon by the Fifth Circuit for this erroneous statement is Cheatham v. City of New Orleans, 391 So.2d 1324 (La. 4 Cir. 1980), included as Appendix D. Cheatham, supra, dealt with the right of intervention in a lawsuit after final judgment and

It is no deterrent to future corrupt acts for the Fifth Circuit to manufacture an opinion which sees no loss for purposes of federal action and yet recognizes an action in conversion for the state courts.

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the availability of summary proceedings, not the validity of a lien for attorney's fees prior to disbursement of funds. Indeed, the very language of the Cheatham opinion specifies the limits of the opinion:

> ... The applicable statute in this case is R.S. 9:5001 which grants a privilege to attorneys to secure fees on judgments obtained by them.
>
> In the instant case, the judgment in Mrs. Cheatham's favor has been satisfied and the question to be resolved is whether the city has any liability to respondent for satisfying that judgment and ignoring respondent's assertions that he was entitled to share in that judgment. The other question is the contractural dispute between respondent and Jones and Dennis. However, these are new causes of action which are not simply ancillary to the now

If the judgment of the Fifth Circuit stands, these corrupt acts will have placed the defendants exactly where they had plannned to be, in state court with Mr. Fontana's attorney's fees in their pockets. Can Mr. Fontana reasonably expect fairer treatment in the state judiciary?

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final and completed case of Cheatham v. City of New Orleans.

Cheatham v. City of New Orleans, supra, 391 So.2d at 1326-1327.

Moreover, as a factual matter there could not be a mere procedural default. Mr. Fontana relied on the specific representations of Mr. Anzelmo, the City Attorney, that the city would not pay the judgment until the dispute over attorney's fees had been paid -- a position which the City Attorney attempted to maintain through a Confidential Memorandum to the Chief Administrative Officer of the City of New Orleans on the day before the judgment was paid to all parties at interest except Mr. Fontana. (A copy of this memorandum is attached as Appendix C.) Apparently the Fifth Circuit could

## CONCLUSION

If the underlying purpose of 42 U.S.C. 1983 is the prevention of abuses of power by state government officials, then it is necessary for this Court to reassert that ideal post-Parratt. The present opinion, which finds no loss cognizable under 42 U.S.C. 1983 but twice states that an action for conversion will lie in state court, is indicative of the belief by many lower courts that Parratt was an invitation to invent new rationales for dismissing civil rights claims. Civil rights and

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not envision these facts as "any set of facts which could be proved in support of his [Fontana's] claim." Additionally, lest there be any doubt about the merits of the allegations of the original complaint, attached as Appendix F is an excerpt from the deposition of Reynard Rochon, Chief Administrative Officer of the City of New Orleans, where he admits that his actions deprived petitioner of his fees.

the prevention of abuses of power by state government officials are important concerns for all who believe in the American ideals of equality and justice. It is respectfully submitted that the present case warrants consideration by this Court.

Respectfully submitted,

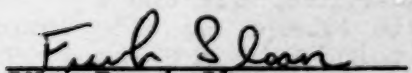
SILVESTRI & MASSICOT

BY: John P. Massicot

BY: Frank A. Silvestri
577 So. Carrollton Avenue
New Orleans, LA 70118

and

LAW OFFICE OF FRANK SLOAN



BY: Frank Sloan
121 Deckbar Avenue
Jefferson, Louisiana

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

No. _____

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LUKE FONTANA,

PETITIONER

v.

MACK E. BARHAM, ET AL,

RESPONDENT.

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PROOF OF SERVICE

STATE OF LOUISIANA )

) ss.:

PARISH OF ORLEANS )

FRANK SILVESTRI, after being duly sworn, deposes and says that pursuant to Rule 28.4(a) of this Court he served the within PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE FIFTH

CIRCUIT on counsel for Respondents by enclosing a copy thereof in an envelope, first class postage prepaid, addressed to:

Mr. Galen Brown
Assistant City Attorney
City Hall
New Orleans, Louisiana 70112

Mr. Phillip Whitman
Stone, Pigman, Walther
Whitmann & Hutchinson
Suite 1000
Whitney Building
New Orleans, Louisiana 70130

and depositing same in the United States mails at New Orleans, Louisiana on 14 October 1983.

FRANK A. SILVESTRI

SUBSCRIBED AND SWORN TO
BEFORE ME THIS 15
DAY OF OCTOBER, 1983. SEAL

NOTARY PUBLIC IN AND FOR SAID
PARISH AND STATE WHO CERTIFIES
HE IS A MEMBER OF THE BAR OF THE
SUPREME COURT OF THE UNITED STATES

APPENDIX "A"

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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NO. 82-3064

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LUKE FONTANA,
Plaintiff-Appellee

VERSUS

MACK E. BARHAM, ET AL.,
Defendants-Appellees

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Appeal From the United States
District Court for the Eastern
District of Louisiana

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(June 17, 1983)

Attorney brought civil rights action against city and law firm alleging conspiracy to violate his constitutional rights by deprivation of a fee. The United States District Court for the Eastern District of Louisiana, at New Orleans, George Arceneaux, Jr., J., granted motions to dismiss, and plaintiff appealed. The Court of Appeals,

Goldberg, Circuit Judge, held that: (1) attorney's chose in action based on underlying contractual obligation between himself and client was a species of property protected by the Fourteenth Amendment, but (2) city's conduct when it issued its check in satisfaction of judgment against it to client without including plaintiff attorney as listed payee did not constitute a deprivation of property for purposes of civil rights statute and the Fourteen Amendment, since attorney had not been divested of entitlement to pursue the enforcement of his claim.

Affirmed.

1. Civil Rights - 13.12(2)

Initial task in determining whether complaint states a cause of action under civil rights statute is to examine complaint, focusing upon the nature of the protected interest, the nature of the alleged deprivation, and the state's involvement in that deprivation to

determine whether complaint properly sets forth a claim of deprivation of rights privileges, or immunities secured by the Constitution or laws of the United States caused by persons acting under color of state law. 42 U.S.C.A. ¶1983; Fed. Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.

2. Civil Rights - 13.12(2)

In order to state a cause of action under civil rights statute, plaintiff's complaint must allege a deprivation of a right secured by the Constitution and laws of the United States resulting from conduct committed by a person acting under color of state law. 42 U.S.C.A. ¶1983.

3. Civil Rights - 13.1

Civil rights statute, ¶1983, neither provides a general remedy for the alleged torts of state officials nor opens the federal courthouse doors to relieve the complaints of all who suffer

injury at the hands of the state or its officers. 42 U.S.C.A. ¶1983.

4. Constitutional Law - 277(1)

Attorney's chose in action based on underlying contractual obligation between himself and client was a species of property protected by the Fourteenth Amendment. U.S.C.A. Const.Amend. 14.

5. Civil Rights - 13.4(1)
Constitutional Law - 278(1.2)

Conduct of city when it issued check in satisfaction of judgment against it to client without including attorney as listed payee did not constitute a "deprivation" of property for purposes of civil rights statute and the Fourteenth Amendment, since attorney's property interest, his claim for attorney fees, continued to exist and state law provided a variety of mechanisms by which claim could be protected or reduced to possession, even though some of them were presently unavailable as a

result of procedural defaults. LSA-R.S. 9:5001, 37:218; 42 U.S.C.A. ¶1983; U.S.C.A. Const.Amend. 14.

See publication Words and Phrases for other judicial constructions and definitions.

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Silvestri, Marinaro, Massicot & Davis, Frank A. Silvestri, Frank Sloan, New Orleans, La., for plaintiff-appellant.

Stone, Pigman, Walther, Wittmann & Hutchinson, Kyle D. Schonekas, Phillip A. Wittmann, New Orleans, LA., for Barham.

Casandra J. Cooper, Harvey, La., for Ernest Jones.

Galen S. Brown, Deputy City Atty., New Orleans, La., for City of New Orleans, et al.

Appeal from the United States District Court for the Eastern District of Louisiana.

Before GOLDBERG, GEE and RANDALL, Circuit Judges.

GOLDBERG, CIRCUIT Judge:

In this appeal we are asked to determine whether certain alleged activities of governmental officials are actionable under 42 U.S.C. ¶1983 (1976). The district court dismissed appellant's cause of action for failure to state a claim upon which relief can be granted. Fed.R.Civ.P. 12(b)(6). We affirm.

1. FACTS AND PROCEEDINGS BELOW

A. Facts

On April 12, 1975, Sheryl Cheatham's husband was killed in an incident involving two New Orleans police officers. Wishing to pursue a wrongful death action against the City of New Orleans ("City"), Mrs. Cheatham retained as her legal counsel plaintiff-appellant Luke Fontana and defendants Charles Cotton, David Dennis, and ERnest Jones. The arrangement between Mrs. Cheatham and her attorneys was memorialized in a contingent fee agreement executed on May 5, 1975, which provided that the attorneys were to receive as compensation fifty percent of Mrs.

Cheatham's total recovery following a successful appeal of her claim.

Mrs. Cheatham's wrongful death action, while ultimately successful, precipitated a trial and two appeals in the state courts of Louisiana. Defendant-appellee Mack Barham was engaged to handle the writ application to the Louisiana Supreme Court, which awarded Mrs. Cheatham a $619,000 judgment against the City and others. Cheatham v. City of New Orleans, 378 So.2d 369 (La. 1979). This judgment became final when the court denied rehearing on January 11, 1980.

After the judgment became final, and during the efforts to collect, a dispute arose concerning the division of attorneys' fees. On March 21, 1980, Fontana attempted to record the contingent fee contract in the record of the Cheatham case in compliance with La.-Rev.Stat.Ann. ¶37:218 (West Supp.

1983).[1] On April 11, 1980, the City issued two checks in payment of the judgment, both of which listed only Mrs. Cheatham as payee. Mrs. Cheatham negotiated the checks, and the attorneys' fees were apportioned among the other attorneys to the exclusion of appellant Fontana.

After the City had distributed the funds to Mrs. Cheatham, Fontana filed summary proceedings in Louisiana state court against the City, arguing that he was entitled to a portion of the Cheatham judgment pursuant to the recorded contingent fee agreement. The trial court held for Fontana, but the Louisiana court of appeals reversed.

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1. La.Rev.Stat.Ann. § 37:218 (West Supp.-1983) permits an attorney to acquire as his fee an interest in the subject matter of a client's claim and protects that interest in the event that the client settles orcompromises the cause of action. The Louisiana Supreme Court has interpreted § 37:218 as creating no more than a privilege to aid the attorney's collection of a fully earned fee out of the fund yielded by satisfaction of the client's claim. Saucier v. Hayes Dairy Prods., Inc., 373 So.2d 102, 117 (La.1979) (on reh'g.).

Cheatham v. City of New Orleans, 391 So.2d 1324 (La.App.1980). The court of appeals held that Fontana's effort to record his employment contract failed to protect his interest because the contract was filed pursuant to an inapplicable statute. Id at 1326. The court noted that La.Rev.Stat.Ann. ¶37:218, upon which Fontana had relied, provides protection against the loss of attorneys' fees in the event the client and the adverse party settle the pending suit. Id. In this case, the court stated, the applicable statute would have been La.Rev.Stat.Ann. ¶9:5001 (West 1951), which grants to attorneys a privilege [2] to secure fees on judgments obtained by them. Id. Because Mrs. Cheatham's case resulted in a judgment rather than a settlement, Fontana should have pursued his right to attorneys' fees under La.Rev.Stat.Ann. ¶9:5001. The court further observed

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2. Under Louisiana law, a privilege is "a right which the nature of a debt gives to a creditor, and which entitles him to be preferred before other creditors, even those who have mortgages." La.Civ.Code Ann. art. 3186 (West 1952).

that in recording the contingent fee agreement Fontana had denominated his action a "petition to intervene."[3] The court labelled the attempted intervention a "misnomer ... considering the provisions of [La.Code Civ.Proc.Ann. art. 1091-1094 (West 1960)] with respect to intervention and considering that there was no suit pending in the trial court into which an intervention could be filed." Id. Thus, the court held that Fontana's effort to preserve an interest in the Cheatham judgment failed.

B. Procedural History

Fontana initiated this action in the United States District Court for the Eastern District of Louisiana on February 24, 1981. His complaint, which

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3. A petition to intervene would have been an appropriate means by which for Fontana to assert his rights in the Cheatham judgment under La.Rev.Stat.Ann. § 9:5001. See Calk v. Highland Const. & Mfg., 376 So.2d 495, 499 (La. 1979); Roberts v. Hanover Ins. Co., 338 So.2d 158, 161 (La.App.1976); Selly v. Watson, 210 So.2d 113, 116 (La.App. 1968).

named as defendants the City, the Mayor of New Orleans, the City Attorney, the Chief Administrative Officer of the City, Barham, Cotton, Dennis, and Jones, asserted a cause of action under 42 U.S.C. ¶1983 (1976), as well as pendent state claims. Fontana alleged that the defendants "conspired with one and other [sic] to violate the constitutional right of plaintiff, LUKE FONTANA, in contravention of 42 U.S.C. ¶1983." Record on Appeal, Vol. 1 at 2. In particular, Fontana complained that the municipal defendants violated his civil rights when the City "issued a check for the judgment and interest in the Cheatham v. City of New Orleans case and intentionally failed to put plaintiff's name upon said check as payee." Id. at 3. Fontana urged that this action by the City violated his "clearly established constitutional rights o due process, property, employment, free speech, as well as right to petition the government without intimidation or punishment," because the municipal defendants "knew or reasonably should

have known that they were setting in motion a series of acts which would cause defendants BARHAM, COTTON, JONES and DENNIS to inflict the constitutional injuries to plaintiff which were suffered by plaintiff." Id at 4. Fontana further averred that the municipal defendants "should have known or made it their business to find out the manner in which the attorney's fees were to be disbursed," Id. at 3. Fontana then prayed for an awared of $1 million, plus attorneys' fees, costs and interest. Id. at 6.

Barham and the City filed motions to dismiss Fontana's complaint under Fed.R.Civ.P. 12 (b)(6). The district court initially denied these motions on May 13, 1981. On May 18, 1981, the United States Supreme Court rendered its opinion in Parratt v. Taylor, 451 U.S. 527, 101 S.Ct. 1908, 68 L.Ed.2d 420 (1981).[4] Barham and the City, en-

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4. In Parratt v. Taylor, 451 U.S. 527, 101 S.Ct. 1908, 68 L.Ed.2d 420 (1981), a Nebraska prisoner invoked 42 U.S.C. § 1983 (1976) to

couraged by the Parratt holding, again urged the motions to dismiss, which the district court then granted after oral argument.

In granting the defendants' motion to dismiss, the district court relied heavily upon the Supreme Court's rationale in Parratt. The district court observed that Fontana's alleged deprivation did not occur as a result of an established state procedure and noted that the state of Louisiana provided adequate remedies for redress. The court then stated:

> In essence, this case is a dispute over attorneys' fees. It is nothing more than a state court claim masquerading as a Section 1983 claim. The proper forum for

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redress the negligent loss of a mail-order hobby kit by prison employees. The Supreme Court held that the prisoner's loss constituted a deprivation of property within the meaning of § 1983 and the fourteenth amendment. Id. at 535-536, 101 S.Ct. at 1913. The Court further held, however, that the deprivation did not violate the due process clause. Id at 543, 101 S.Ct. at 1917. The Court noted that the prisoner's loss resulted from the

> plaintiff's claim, despite the Section 1983 trappings, is state court. There is no established state policy upon which defendant could have relied as depriving plaintiff of due process. The right to receive his fair share of attorneys' fees is one of a number of interests best protected by the state through its tort laws.

Fontana v. Barham, No. 81-761, slip op. at 3 (E.D.La. Jan. 6, 1982). Fontana now appeals from the district court's dismissal of his cause of action.

## II. ISSUES ON APPEAL

[1] The district court, apparently persuaded that the Parratt principle governed the instant situation, dismissed Fontana's claim under section

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random and unauthorized act of a state employee rather than from an established state procedure. Id. at 539-543, 101 S.Ct. at 1915-16. Furthermore, the Court observed that Nebraska provided a tort remedy system adequate to compensate the prisoner for hisloss. Id at 543, 101 S.Ct. at 1917. Thus, the Court concluded that the prisoner had not stated a claim for relief under § 1983 because he had not demonstrated a deprivation of proerty under color of state law without due process of law.

1983. In appellate briefs and at oral argument, the parties have expended considerable energy in fending or denouncing the application of Parratt to this case. We, however, find it unnecessary to address the difficult and important questions left unanswered by the Parratt decision, for we agree with the appellees that this case presents a more fundamental issue of section 1983 jurisprudence. In analyzing Fontana's asserted claim under section 1983, we must first determine whether the complaint properly sets forth a claim of a deprivation of rights, privileges, or immunities secured by the Constitution or laws of the United States caused by persons acting under color of state law. Parratt, 101 S.Ct. at 1912-13; Baker v. McCollan, 443 U.S. 137, 140, 99 S.Ct. 2689, 2692, 61 L.Ed2d 433 (1979); Williams v. Kelley, 624 F.2d 695, 697 (5th Cir. 1980), cert. denied, 451 U.S. 1019, 101 S.Ct. 3009, 69 L.Ed.2d 391 (1981). Thus, our initial task is to examine Fontana's complaint, focusing upon the nature of the protected inter-

est, the nature of the alleged deprivation, and the state's involvement in that deprivation. Because we conclude that the complaint does not set forth a deprivation of a protected interest, we affirm the district court's dismissal of Fontana's claim without considering the reach of Parratt's rationale.

III. THE SECTION 1983 CLAIM

[2, 3] In judging the propriety of the dismissal of a section 1983 claim under Fed.R.Civ.P. 12(b)(6), we are guided by a familiar standard. "[A] motion to dismiss for failure to state a claim should not be granted unless it appears to a certainty that the plaintiff would not be entitled to recover under any state of facts which could be proved in support of his claim." Sims v. Adams, 537 F.2d 829, 831 (5th Cir.1976). Accordingly, in reviewing the district court's dismissal here, our task is to determine whether Fontana's allegations, if proven true, are sufficient to support a cause of action under

section 1983.

Section 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

In order to state a cause of action under section 1983, a plaintiff's complaint must allege a deprivation of a right "secured by the Constitution and laws of the United States" resulting from conduct committed by a person acting under color of state law. Parratt, 101 S.Ct. at 1912-13; Baker, 443 U.S. at 140, 99 S.Ct. at 2692. Section 1983 "neither provides a general remedy for the alleged torts of state officials nor opens the federal court-house doors to relieve the complaints of

all who suffer injury at the hands of the state or its officers." White v. Thomas, 660 F.2d 680, 683 (5th Cir.1981).

Appellant Fontana asserts that his complaint is cognizable under section 1983 because it alleges a deprivation of his rights to due process, property, employment, free speech, and petition at the hands of municipal officials of the City. According to Fontana, this alleged deprivation occurred when the City officials, pursuant to a conspiracy with the other defendants, issued a check to Mrs. Cheatham in payment of the judgment in her favor, purposely omitting Fontana's name as a payee. By failing to include him as a payee on the check, Fontana claims, the City committed the sort of "constitutional tort" that section 1983 was designed to redress. We cannot agree.

Fontana asserts as his protected interests the "clearly established constitutional rights of due process,

property, employment, free speech, [and] right to petition the government without intimidation or punishment." Record on Appeal, Vol. I at 4. In his brief, however, appellant concedes that without a violation of his property rights there would be no other violations, because the heart of his claim is the City's failure to include him as a payee on the judgment check. Brief for Appellant at 8-9. Fontana characterizes the City's action as "the virtual theft of $200,000.00 in attorney's fees earned by plaintiff-appellant Fontana." Id. at 9. Fontana's basic claim, then, seems to be that he was deprived of his property interest in Mrs. Cheatham's judgment without due process of law, in contravention of the fourteenth amendment.

[4] The exact nature of Fontana's property interest merits brief discussion. An attorney has no constitutional right to have himself listed as a payee on a check issued in judgment to a client. Basically, the only property right at stake here is Fontana's con-

tractual right to the payment of attorneys' fees, which arises out of the contingent fee agreement between Fontana and Mrs. Cheatham. Fontana's right to attorneys' fees, the claim he holds against Mrs. Cheatham for the rendering of legal services to her, is simply a chose in action based upon the underlying contractual obligation between them. As such, Fontana's claim is a species of property protected by the fourteenth amendment. Logan v. Zimmerman Brush Co., 455 U.S. 422, 102 S.Ct. 1148, 1154, 71 L.Ed.2d 265 (1982) (cause of action is property for purposes of fourteenth amendment citing Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950)). See also Terrell, Causes of Action as Property: Logan v. Zimmerman Brush Co. and the "Government-as-Monopolist" Theory of the Due Process Clause, 31 Emory L.J. 491, 507-08 (1982).

[5] Having determined that Fontana has asserted an interest protected by

the Constitution--a fourteenth amendment property interest taking the form of a contractual claim for attorneys' fees--we must now parse Fontana's complaint in search of the remaining components of an action under section 1983. In order to state a claim cognizable under this section, Fontana must allege that he was deprived of his protected interest by conduct committed under color of state law. Thus, we now shift our focus to the alleged deprivation at issue here. Fontana asserts that he was deprived of his right to attorneys' fees when the City issued its check to Mrs. Cheatham without including Fontana as a listed payee. We are unable to agree that this conduct constitutes a deprivation of property for purposes of section 1983 and the fourteenth amendment.

As noted above, the protected property interest involved here is Fontana's incorporeal contractual claim for attorneys' fees. It is undeniably true, as Fontana alleges, that when the City discharged its judgment debt to

Mrs. Cheatham it did not pay Fontana's attorneys' fees; nevertheless, this failure by the City to include Fontana's name on the check can hardly be said to have deprived him of his contractual claim. Louisiana law provides a variety of mechanisms by which such a claim may be protected or reduced to possession. For example, LA.Rev.Stat.Ann. § 37:218 (West Supp. 1983) preserves an attorney's right to collect earned fees out of the proceeds of a settlement between the client and the adverse party by granting to the attorney a privilege over other creditors. See Saucier v. Hayes Dairy Products, Inc., 373 So.2d 102, 117 (La.1979) (on reh'g.). A complementary statute, La.Rev.Stat.Ann. § 9:5001 (West 1951), provides an attorney with a privilege over other creditors on judgments obtained on behalf of a client. Additionally, an attorney has a cause of action for fees based on the employment contract with his client as well as a cause of action in conversion against anyone who unlawfully appropriates those fees. To the

extent that the privileges afforded by La.Rev.Stat.Ann. § 37:218 and § 9:5001 are presently unavailable to Fontana, such adverse situation has resulted from his own procedural defaults. Cheatham, 391 So.2d at 1326; see supra at 223. As to the remaining avenues for pursuing his claim, contract and conversion, Fontana himself has acknowledged and exploited their existence by initiating actions in both federal and state courts, which are presently pending. All Fontana ever had was a claim for attorneys' fees, a claim he retains to this day. In no way has he been divested of his entitlement to pursue the enforcement of that claim. His chose in action remains actionable; his property interest is still intact. We therefore find presented in this complaint no deprivation of Fontana's protected property interest.[5]

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5. This is not to say that a claim of a deprivation of a contractual right to attorneys' fees would never be cognizable under § 1983. For instance, a complaint alleging that state officials interfered with an attorneys' pursuit

Although our considered evaluation of Fontana's complaint discloses a property interest protected by the fourteenth amendment, we are unable to ascertain any deprivation of that interest, much less a deprivation occurring by reason of conduct engaged in by officials acting under color of state law. See Martinez v. California, 444 U.S. 277, 283-85, 100 S.Ct. 553, 558-59, 62 L.Ed.2d 481 (1980).[6] We conclude, therefore, that Fontana can prove no set of facts in support of his claim that would entitle him to relief under section 1983. See York v. City of Cedartown, 648 F.2d 231, 232 (5th Cir.1981). Because Fontana's complaint does not state a cause of action cogni-

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of such a claim by obstructing access to the judicial process might well involve the sort of deprivation of property encompassed by § 1983. Such circumstances, however, are not present here.

6. In Martinez v. California, 444 U.S. 277, 100 S.Ct. 553, 62 L.Ed2d 481 (1980), the survivors of a 15-year-old girl killed by a

zable under section 1983, the district court's grant of the defendant's motion to dismiss was appropriate. We therefore affirm that dismissal, while expressing no opinion as to the effect of Parratt on the claim at bar.

## IV. CONCLUSION

This is a quotidian, not a cosmic, case. We do not scythe section 1983 by concluding that Fontana's complaint is

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parolee brought an action for damages under § 1983 against the state officials responsible for the killer's parole release decision. The complaint alleged that the state officials knew or should have known that the parolee's release created a clear and present danger that such an incident would occur and characterized the officials' action as reckless, willful, wanton, malicious, and negligent. The Supreme Court held, inter alia, that the state officials "did not 'deprive' appellants' decedent of life within the meaning of the Fourteenth Amendment." Id at 285, 100 S.Ct. at 559. The Court concluded by observing that "it is perfectly clear that not every injury in which a state official has played some part is actonable under [§ 1983]." Id.

not cognizable under that section, for we hold only that Fontana has filed to assert the necessary deprivation of property under color of state law that would bring section 1983 into play. Where nothing has been lost, no judicial plunge into the curative waters of section 1983 is necessary. We need not venture further than to say that here there has been no deprivation, without which there can be no section 1983 relief. Thus, we leave Fontana as we found him--armed with the contractual claim for attorneys' fees he has had all along.

AFFIRMED.

APPENDIX "B"

UNITED STATES DISTRICT COURT
FOR THE FIFTH CIRCUIT

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LUKE FONTANA,
Plaintiff-Appellant

versus

MACK E. BARHAM, ET AL.,
Defendants-Appellees

Filed July 18, 1983
Gilbert F. Ganucheau

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Appeal from the United States District Court for the Eastern District of Louisiana

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ON PETITION FOR REHEARING AND SUGGESTION FOR REHEARING EN BANC

(Opinion June 17, 1983, 5 Cir., 198_, _____ F.2d _____)

July 18, 1983

Before GOLDBERG, GEE and RANDALL, Circuit Judges.

PER CURIAM:

(X) The Petition for Rehearing is DENIED and no member of this panel nor

Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc, (Federal rules of Appellate Procedure and Lcoal Rule 35) the Suggestion for Rehearing En Banc is DENIED.

( ) The Petition for Rehearing is DENIED and the Court having been polled at the request of one of the members of the Court and a majroity of the CircuitJudges who are in regular active service not having voted in favor of it, (Federal Rules of Appellate Procedure and Local Rule 35) the Suggestion for Rehearing En Banc is also DENIED.

( ) A member of the Court in active service having requested a poll on the reconsideration of this cause en banc, and a majority of the judges in active service not having voted in favor of it, rehearing en banc is DENIED.

ENTERED FOR THE COURT:
s/Thomas G. Gee

United States Circuit Judge

APPENDIX "C"

Mrs. Sheryl CHEATHAM, Individually and on Behalf of Her Minor Son, Charles Cheatham,

v.

The CITY OF NEW ORLEANS.

In re CITY OF NEW ORLEANS et al. Applying for Writs of Certiorari and/or Review Directed to the Honorable Thomas A. Early, Jr., Judge, Civil District Court for the Parish of Orleans, Division "A", No. 592-798.

In re David J. DENNIS and Ernest Jones Applying for Writs of Certiorari, Prohibition, Mandamus and for a Stay Order Directed to the Honorable Thomas A. Early, Jr., Judge, Civil District Court for the Parish of Orleans, Division "A", No. 592-793.

Nos. 12067, 12084.

Court of Appeal of Louisiana, Fourth Circuit.

Nov. 24, 1980.

Rehearing Denied Jan. 19, 1981.

Attorney, who assertedly had been employed to handle claim against city,

filed petition to intervene and filed rule against city to show cause why satisfaction of judgment against it should not be made pursuant to contract between client and attorney. The civil District Court, Parish of Orleans, Thomas A. Early, Jr., J., overruled city's dilatory and peremptory exceptions and, in a second judgment, made subpoenas duces tecum returnable and issued order temporarily restraining person from disposing of or otherwise processing funds paid in satisfaction of judgment against city and ordering him to deposit the sums in registry of the Court. After granting certiorari, the Court of Appeal, Fourth Circuit, Schott, J., held that: (1) statute, which provided protection to attorneys handling pending suits against loss of fees if suits were settled between adverse parties and clients, was not applicable in the case in question which involved issue whether city was liable to attorney for satisfying a judgment against city and ignoring attorney's assertion that he had been employed to handle the

claim against city and was entitled to share in the judgment, and (2) such case was not a case in which summary proceedings could be used.

Writs peremptorily reversed and annulled.

Samuel, J., concurred with written reasons.

1. Attorney and Client #189

Statute, which provided protection to attorneys handling pending suits against loss of fees if suits were settled between adverse parties and attorneys' clients, was not applicable in case involving issue whether city was liable to attorney for satisfying a judgment against city and ignoring attorney's assertions that he had been employed to handle the claim against city and was entitled to share in the judgment; the applicable statute was the statute granting a privilege to attorneys who secured fees on judgments

obtained by them. LSA-R.S. 9:5001, 37:218.

2. Attorney and Client - #156

Case, in which attorney asserted claim against city based on theory that it was liable to attorney for satisfying a judgment against city and ignoring attorney's assertions that he had been employed to handle the claim against city and was entitled to share in the judgment, was not a case in which summary proceedings could be used; city was entitled to ordinary process. LSA-R.S. 9:5001; LSA-C.C.P. art. 2592.

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Ernest Jones, Harvey, David J. Dennis, Lafayette, for realtor.

Mack E. Barham, New Orleans, for respondent.

John Paul Massicot, Douglas P. Wilson, Chief Deputy City Atty., New Orleans, for Dennis. [sic]

Before SAMUEL, REDMANN and SCHOTT, JJ.

SCHOTT, Judge.

We grant certiorari in order to examine the validity of two judgments of the trial court. In the first rendered October 16, 1980, the trial court overruled dilatory and peremptory exceptions filed by the City of New Orleans, and in the second rendered on November 4, 1980, the trial court made subpoenas duces tecum issued to Ernest Jones and David Dennis returnable on or before November 14, 1980, and issued a temporary restraining order against David Dennis from disposing of or otherwise processing funds in his possession previously paid to him in satisfaction of a judgment against the City of New Orleans and ordering him to deposit such sums in the registry of the court. For a complete understanding of the problem before us, a summary of the procedural steps is in order.

In Cheatham v. City of New Orleans, 378 So.2d 369 (La. 1979) Mrs. Sheryl Cheatham obtained a judgment against the City of New Orleans and others for $619,000. This judgment became final when the court denied rehearing on January 11, 1980.

On March 21, 1980, Luke Fontana, who is the respondent to these writ applications, filed a petition to intervene in suit No. 592-798 of the Civil District Court for the Parish of Orleans which as the original suit ultimately decided by the Supreme Court on January 11. In his petition respondent alleged that he had been employed by Mrs. Cheatham along with the firm of Cotton, Jones & Dennis to handle her claim against the City, with the understanding that he was to receive half of the attorney fees earned therein. He prayed simply for leave to file his petition of intervention along with a copy of the contract between Mrs. Cheatham, as client, and Cotton, Jones & Dennis and the respondent as attorneys

and an affidavit in which respondent recited he was filing the contract pursuant to LSA R.S. 37:218.

In June, 1980, respondent filed a rule against the City of New Orleans to show cause why satisfaction of the judgment in this case should not be made pursuant to the contract which he previously filed in these proceedings and also pursuant to R.S. 37:218.

The City of New Orleans responded with the dilatory exception of improper use of summary proceedings and peremptory exceptions of no cause or right of action based on respondent's failure to file his intervention while the suit between the original parties was pending and before judgment became final.

On October 16, 1980, the trial judge overruled these exceptions, dismissed a motion to quash the deposition of David Dennis and rescheduled that deposition for October 27, 1980.

On October 22, 1980, respondent caused a subpoena duces tecum to be issued to David Dennis ordering him to produce in the trial court on October 31, 1980, various contracts relative to the dispute over the fee as well as records of disbursements made to Sheryl Cheatham, his law firm and Mack Barham.

On November 4, 1980, the trial judge made the subpoenas duces tecum against Ernest Jones and David Dennis returnable on November 14, 1980 and issued the temporary restraining order with respect to funds in the hands of David Dennis.

On November 3 the City of New Orleans filed an application in this court for supervisory writs seeking a reversal of the judgment of October 16 overruling its exceptions.

On November 13 David Dennis and Ernest Jones filed an application in this court for supervisory writs seeking to set aside the trial court's judgement

of November 4 on the primary ground that the judgment overruling the City's exceptions was erroneous and with the reversal of that judgment the judgment of November 4, which necessarily presupposed a valid pending suit would likewise fall.

In its application the City devoted a great deal of attention to attacking respondent's petition for intervention filed in March, 1980. It is quite obvious that this "intervention" was a misnomer employed by respondent considering the provisions of LSA C.C.P. Arts. 1091 through 1094 with respect to intervention and considering that there was no suit pending in the trial court into which an intervention could be filed. However, regardless of the caption respondent put on his pleadings, his intention was to file the copy of his contract with Mrs. Cheatham and Dennis and Jones with the clerk of court and thereby comply with R.S. 37:218. In his rule to show cause respondent referred specifically to this filing of

his contract and obtained an order against the City to show cause why the judgment should not be satisfied pursuant to his contract and the statute. Respondent claims entitlement to the use of summary proceedings on the theory that he is simply attempting to obtain a satisfaction of the judgment in which he has an interest. He asserts, in effect, that the City's payment of the entire judgment to Mrs. Cheatham and Jones and/or Dennis in the face of the contract which he filed before payment was made, did not constitute satisfaction of the judgment since he did not receive any of the proceeds. Thus, his argument is based on two propositions, 1) he obtained an interest in the judgment by complying with R.S. 37:218, and 2) as a party holding an interest in the judgment which interest was not satisfied by the payment he is entitled to proceed by summary proceedings to obtain a satisfaction of his interest in that judgment.

[1] By its own terms and by the court's interpretation of R.S. 37:218 in Calk v. Highland Const. & Mfg., 376 So.2d 495 (La. 1979) the statute is inapplicable. It provides protection to the attorney who is handling a pending suit against loss of his fee if the suit is settled between the adverse party and his client. The applicable statute in this case is R.S. 9:5001 which grants a privilege to attorneys to secure fees on judgments obtained by them.

In the instant case, the judgment in Mrs. Cheatham's favor has been satisfied and the question to be resolved is whether the city has any liability to respondent for satisfying that judgment and ignoring respondent's assertions that he was entitled to share in that judgment. The other question is the contractual dispute between respondent and Jones and Dennis. However, these are new causes of action which are not simply ancillary to the now final and completed case of Cheatham v. City of New Orleans.

[2] Under LSA C.C.P.Art 2592 summary proceedings may only be used in certain instances. The assertion of a claim for a money judgment by respondent against the City of New Orleans is not among those uses which are listed. We have concluded that the City is entitled to ordinary process and the dilatory exception of improper use of summary proceedings was erroneously overruled by the trial court. His judgment in this connection will be reversed. Because of this action taken on the dilatory exception it is unnecessary for us to address the exceptions of no right or cause of action but since our judgment will dismiss the proceedings filed by respondent against the City the judgment of November 4, 1980, with respect to subpoenas and the restraining order must necessarily be annulled.

The judgment of October 16, 1980, overruling the dilatory exception of improper use of summary proceedings filed by the City of New Orleans is reversed and set aside and there is

judgment in favor of the City, maintaining its exception of improper use of summary proceedings and dismissing the claim of the respondent, Luke Fontana.

The judgment of November 4, 1980, is annulled and set aside. The stay order we issued on November 14, 1980, is recalled as moot.

All costs of these proceedings are taxed against respondent Luke Fontana.

WRITS PEREMPTORY REVERSED AND ANNULLED.

SAMUEL, J., concurs with written reasons.

SAMUEL, Judge, concurring with written reasons.

I agree with the opinion and decree of the majority.

Additionally, however, the intervention itself is impermissible. Under

the specific wording of Code of Civil Procedure Article 1091 a third party is allowed to intervene only in a "pending action" and here the intervention was filed after the judgment had become final.

Accordingly, I respectfully concur.

APPENDIX D

CITY OF NEW ORLEANS

INTER-OFFICE MEMORANDUM

Date: April 10, 1980

To: Reynard Rochon Dept.: Chief Administrative Officer

From: Salvador Anzelmo Dept: City Attorney

RE: Sheryl Cheathm, et al v. City of New Orleans, et al

PERSONAL AND CONFIDENTIAL

In confirmation of our conversation today, the following is provided.

As per your instructions, this office has prepared vouchers for payment to Mrs. Sheryl Cheatham, individually and for her minor son, Charles Cheatham, Jr., together with a Receipt and Release for her execution in her respective capacities.

As I have stated to you, there is an on-going dispute among the attorneys of record in this matter who have, at one time

or another, represented Mrs. Cheatham, et al., as to which of them is entitled to attorney fees for obtaining the judgment rendered by the Supreme Court.

Further, R.S. 9:5001 provides that an attorney has a privilege for his attorney fees against any judgment obtained through his efforts. (A copy of this statute is attached). In addition, the law makes provision, in R.S. 37:218, relative to contingent fee contracts between attorneys and clients. (A copy of R.S. 37:218 is attached)

In view of the above statutes and in view of the hereinafter mentioned action, by one of the attorneys who claims to have represented Mrs. Cheatha, et al, asking the court to recognize his privilege for his services and representation of said parties, the City may find itself liable for the payment of any judgment awarded in the intervention suit. This judgment could be as much as $200,000.00, plus interest and costs thereon if his intervention is successful.

(A copy of the memo in support of the intervention is attached; the City has not been served with a intervention as of this date.)

Accordingly, payment of the full amount of the judgment to Mrs. Cheatham, et al without the written consent of all attorneys of record may leave the City liable for payment of some portion of the attorney fees; therefore, it is suggested that it would be advisable to withhold payment of this judgment to the respective parties until either (1) there is a signed accord among all the attorneys of record, or (2) the monies due the parties be deposited in a concursus proceeding to be distributed by the court.

Very truly yours,

(signed)
SALVADOR ANZELMO
CITY ATTORNEY

SA: vad

Attachments

APPENDIX E

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

| | |
|---|---|
| LUKE FONTANA | CIVIL ACTION |
| VERSUS | NO. 81-762 |
| MACK BARHAM, THE CITY OF NEW ORLEANS, ERNEST N. MORIAL, SALVADOR ANZELMO, REYNARD ROCHON, CHARLES COTTON, ERNEST JONES AND DAVID DENNIS | SECTION "K"<br>MAG. DIV. 4 |

***

Deposition of REYNARD ROCHON, given in the above-entitled cause, prusuant to the following stipulation, before Kari Cayou, a Shorthand Reporter, authorized to administer oaths of witnesses pursuant to Section 861.1 of Title 13 of the Louisiana Revised Statutes of 1950 was amended, taken at the offices of CITY HALL, CHIEF ADMINISTRATIVE OFFICE, New Orleans, Louisiana, on Wednesday, the 22nd day of April, 1981, at 1:30 p.m.

***

APPEARANCES:

SILVESTRI, MARINARO, MASSICOT & DAVIS
BY: FRANK SILVESTRI, FRANK SLOAN AND JOHN MASSICOT
579 South Carrollton Avenue
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ATTORNEYS FOR THE PLAINTIFF

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BY: PHILLIP WITTMAN AND KYLE SCHONEKAS
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New Orleans, Louisiana 70130

ATTORNEYS FOR MACK BARHAM

LAW OFFICES OF GALEN S. BROWN
755 Carondelet Street
New Orleans, Louisiana 70130

ATTORNEY FOR CITY OF NEW ORLEANS, ERNEST F. MORIAL, REYNARD ROCHON AND SALVADOR ANZELMO

REPORTED BY:

KARI CAYOU
SHORTHAND REPORTER

ALSO PRESENT:

SALVADOR ANZELMO

***

(Page 26)

MR. BROWN:

We object to the question but subject to the objection, I'm going to allow the witness to answer the question.

A When I received the memo, what it meant to me was tht there was an attorney deprived of his fee.

BY MR. SILVESTRI:

Q Do you know which attorney we're talking about here, sir, or were you in the dark about that?

MR. BROWN:

Same objection as before. I think the memorandum speaks for itself but subject to the objection.

MR. SILVESTRI:

I'm asking whether or not he knew.

MR. BROWN:

I understand. I said subject to the objection he may answer.

A The attorney I referred to was Luke Fontana.